



Missouri Department of Natural Resources

Clean Water Commission Water Protection Program

Meeting Minutes

March 2, 2005

MISSOURI CLEAN WATER COMMISSION MEETING

March 2, 2005

Quality Inn & Suites

120 Lindsey Dr., Hwy. 36

Hannibal, MO 63401

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
William A. Easley, Missouri Clean Water Commission
Paul E. Hauser, Missouri Clean Water Commission
Kristin Perry, Missouri Clean Water Commission
Cosette Kelly, Missouri Clean Water Commission
Edward Galbraith, Director of Staff, Missouri Clean Water Commission
Bill Bryan, Counsel, Missouri Clean Water Commission
Marlene Kirchner, Secretary, Missouri Clean Water Commission

Leo Alderman, EPA, Kansas City, Kansas
Mike Alesandrini, RCGA, St. Louis, Missouri
Bob Bacon, ERC, Jefferson City, Missouri
Darrell Barber, Department of Natural Resources, Jefferson City, Missouri
Stacia Bax, Department of Natural Resources, Jefferson City, Missouri
Rebecca Bernard, Washington University, St. Louis, Missouri
Meredith Berwick, Washington University, St. Louis, Missouri
Michael Bollinger, Ameren, St. Louis, Missouri
Bob Bromley, Empire District Electric Company, Joplin, Missouri
Robert Brundage, Newman Comley & Ruth, Jefferson City, Missouri
Irene Crawford, Department of Natural Resources, Macon, Missouri
Allen Decker, Missouri Rural Water Association, Gray Summit, Missouri
John DeLashmit, US EPA, Kansas City, Kansas
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Dan Duncan, Moto, Inc., Belleville, Illinois
Mark Fallon, City of Sullivan, Sullivan, Missouri
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri
Peter Goode, Department of Natural Resources, Jefferson City, Missouri
Jeff Gratzner, Jacobs, St. Louis, Missouri
Michael Hall, Meco Engineering Co., Inc., Hannibal, Missouri
Ted Heisel, MO Coalition for the Environment, St. Louis, Missouri
Frank Hudson, City of Auxvasse, Auxvasse, Missouri
Bonnie Janowiak, Department of Natural Resources, Jefferson City, Missouri
Donald Jeffries, River des Peres Watershed Coalition, St. Louis, Missouri
Tom Jones, Jacobs Engineering, Jefferson City, Missouri
James Kennedy, Upland Wings, St. Louis, Missouri

Scott Knight, City of Sullivan, St. Louis, Missouri
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
Maxine Lipeles, Washington University, St. Louis, Missouri
John Lodderhose, St. Louis MSD, St. Louis, Missouri
David Lundstrom, City of Fremont Hills, Nixa, Missouri
Amber Marshaus, Department of Natural Resources, Macon, Missouri
Larry Martin, City of Ozark, Rogersville, Missouri
Refaat Mefrakis, Department of Natural Resources, Jefferson City, Missouri
Terry Merritt, Alliance Water, New London, Missouri
Ray Metscher, Gravois Arm Sewer District, Gravois Mills, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Darrell Miller, Pioneer Point Homeowners Assoc., Inc., Galena, Missouri
Tina Montez, Empire District Electric Co., Joplin, Missouri
Susan Myers, Urban Areas Coalition, St. Louis, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
John Pozzo, Ameren, St. Louis, Missouri
Peter Price, Department of Natural Resources, Rolla, Missouri
Joy Reven, Department of Natural Resources, Jefferson City, Missouri
Chad Ross, Moto, Inc., Swansea, Illinois
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Cynthia Smith, Department of Natural Resources, Jefferson City, Missouri
Dennis Stith, Shafer Kline & Warren, Inc., Macon, Missouri
David Taylor, Gravois Arm Sewer District, Gravois Mills, Missouri
George Thullesen, Empire District Electric Co., Joplin, Missouri
Scott Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Blake Trueblood, Missouri Coalition for the Environment, St. Louis, Missouri
John Vaughn, Pioneer Point Homeowners Assoc., Galena, Missouri
Daryll Walker, City of Auxvasse, Auxvasse, Missouri
Tom Wallace, MEC Water Resources, Columbia, Missouri
Mary West, City of Moberly, Moberly, Missouri
Bob Willis, Doe Run Resources Company, Rolla, Missouri
Kevin Wolff, Metropolitan Engineering, Barnhart, Missouri
Betty Wyse, Department of Natural Resources, Jefferson City, Missouri
Mike Zimmerman, Archer Engineering, Springfield, Missouri

Administrative Matters

Call to Order/Introductions

Chairman Herrmann called the meeting to order at approximately 9:05 a.m. Mr. Scott B. Totten, Director, Water Protection and Soil Conservation Division, Department of Natural Resources, introduced Mr. Ed Galbraith, Director of the Water Protection Program, Department of Natural Resources. Mr. Jim Hull, the previous Director of the Water Protection Program, is now the Director of the Solid Waste Management Program, Department of Natural Resources. Mr. Totten reported that Ms. Pam Bax is the new

Deputy Director of the Water Protection and Soil Conservation Division. Mr. Bryan Fawks, the previous Deputy Director, no longer works for the Department of Natural Resources.

Chairman Thomas Herrmann introduced Commissioners Perry, Hauser, Kelly, and Easley. Commissioner Minton was absent. Chairman Herrmann then introduced Mr. Bill Bryan, Assistant Attorney General, and Ms. Marlene Kirchner, Secretary to the Commission. Chairman Herrmann introduced Mr. Leo Alderman from EPA Region 7. Mr. Alderman introduced Mr. John DeLashmit, Branch Chief of Water Quality, which includes TMDLs and Standards.

State Fiscal Year 2006 State Revolving Fund Intended Use Plan Public Hearing – Ms. Betty Wyse, Director, Financial Assistance Center, presented the draft 2006 Clean Water State Revolving Fund Intended Use Plan. Mr. Doug Garrett, Financial Assistance Center, presented the loan project lists, discussed updates and Readiness to Proceed. The purpose of the public hearing was to provide the department opportunity to present testimony and to provide both the department and the public the opportunity to comment on the Intended Use Plan for State Fiscal Year 2006.

A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, 1101 Riverside Drive, Jefferson City, Missouri.

Approval of January 5, 2005, Clean Water Commission Meeting Minutes – Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

Commissioner Hauser made a motion to accept the January 5, 2005 minutes. Commissioner Kelly seconded the motion. Commissioners Easley, Hauser, Kelly, and Chairman Herrmann voted yes. Commissioner Perry abstained.

Approval to File Draft Rulemaking/Regulatory Impact Reports – Ms. Stacia Bax, Water Quality Monitoring and Assessment, provided a PowerPoint presentation. The department requested the Commission's approval of the Regulatory Impact Reports and draft rules as well as a directive from the Commission to file these documents with the Secretary of State for proposed rulemaking.

Chairman Herrmann commented on the metals concentrations, which are for wastewater discharges. He inquired as to why staff is stipulating concentrations for wastewater discharges as low as and in some cases less than that required for drinking water supplies. Chairman Herrmann would like to go back and review these concentrations with EPA to see what's allowable and permissible.

Mr. Galbraith addressed the rulemaking schedule. The current schedule calls for filing the rules with the Secretary of State and Joint Committee on Administrative Rules by

roughly the end of April. That would lead to a publication date in the Missouri Register of approximately June 1, 2005. The next step would be a public hearing before the Clean Water Commission on July 6, 2005. The end of the public comment period would be approximately mid-July. That gives staff a very short timeframe to respond to comments, make revisions and present it before the Clean Water Commission for final action by August 3, 2005. Staff has until March 1, 2006 to get an effective rule to EPA so that they have their 60-day review to meet their deadline under the Settlement Agreement.

Mr. Ted Heisel, Missouri Coalition for the Environment, requested the Commission direct staff to form a stakeholder workgroup so a process can be put into place to make sure there aren't any deadline problems. He also requested the Commission to direct staff to form a stakeholder workgroup for wetlands standards and unclassified waters. The Missouri Coalition for the Environment will most likely file a rulemaking petition with the Commission and EPA to try and get those issues addressed.

Chairman Herrmann entertained a motion to accept the Regulatory Impact Report and the Water Quality Standards with direction to staff that they will review the single sample max as an inclusion in this process and also to meet with EPA regarding metals concentration in effluent discharges.

Commissioner Hauser made a motion to approve the Regulatory Impact Report and the Water Quality Standards along with direction to staff as stated by Chairman Herrmann. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Commissioner Kelly made a motion to direct staff to form stakeholder meetings to further address the issue of unclassified waters and wetlands. Chairman Herrmann seconded the motion. Commissioners Kelly, Perry, Easley and Chairman Herrmann voted yes. Commissioner Hauser voted no.

Water Classification Guidelines – Mr. John Ford, Water Quality Monitoring and Assessment, reported staff is requesting the Commission to approve the Water Classification Guidelines. The guidelines were developed by the Water Protection Program staff, Environmental Services Program staff and stakeholders.

Commissioner Hauser commented on Guideline 7.2. He suggests deleting that guideline because of the statement "However the department will not use Guideline 7.2 until a special use designation for effluent dominated streams has been promulgated within state water quality standards, 10 CSR 20-7.031."

Commissioner Hauser made a motion to remove Guideline 7.2. Commissioner Perry seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Chairman Herrmann entertained a motion to approve the Water Classification Guidelines minus Guideline 7.2

Commissioner Hauser made a motion to approve the Water Classification Guidelines minus Guideline 7.2. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

City of Auxvasse Variance – Mr. Richard Laux, Permits and Engineering, reported on the City of Auxvasse Variance. Staff recommended preliminary approval with three conditions noted.

Chairman Herrmann entertained a motion relative to the variance request from the City of Auxvasse.

Commissioner Perry made a motion to accept staff recommendation and approve the variance with a TSS value of 70mg/l rather than the original staff recommendation of 30 mg/l. Commissioner Hauser seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Moto, Inc. Motomart Peerless Park Variance – Mr. Laux reported on the Moto, Inc. Motomart Peerless Park Variance. Staff recommended the Commission approve the request with the exception that the effluent limits that would be achieved would be the ones related to water quality, and technology considerations be looked at by the staff before the permit is issued.

Chairman Herrmann entertained a motion relative to the revised staff recommendation.

Commissioner Hauser moved to accept the revised staff recommendation. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Empire District Electric Company Variance – Mr. Laux reported on the Empire District Electric Company Variance. The variance was preliminarily approved at the January 2005 Commission meeting. Staff public noticed the Commission's intent to approve the variance and no comments or objections were received. Staff is recommending final action.

Chairman Herrmann entertained a motion relative to staff's final recommendation.

Commissioner Perry made a motion to approve the variance. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

City of Sullivan Variance – Mr. Laux reported on the City of Sullivan Variance. Staff received some additional information after they prepared their recommendation. The city is requesting that the additional new information they provided be considered before staff makes a recommendation to deny the variance. The new information may establish some grounds to potentially change staff's recommendation. Staff requests to have an

opportunity to look at the new information and come back to the Commission with a revised recommendation.

It was agreeable by the Commission to table the issue until the May 4, 2005 Commission meeting.

Pioneer Point Homeowners Association Variance – Mr. Laux reported on the Pioneer Point Homeowners Association Variance. Staff recommended the Commission accept their recommendation to deny the request.

Mr. John Vaughn, President, Pioneer Point Homeowners Association and Mr. Darrell Miller, Chairman of the Wastewater Sewer Plant Committee explained their variance request to the Commission. Mr. Vaughn reported their board has taken the position that they will meet the level of phosphorus that the Commission has established; however they do have a financial problem. They have asked for the variance to provide them two to three years to build capital reserve so they can implement their plans. That has not been communicated to the department with what they have submitted. The Homeowners Association has inquired to get grants and loans in the past, but they have not qualified.

Chairman Herrmann entertained a motion relative to staff's recommendation.

Commissioner Hauser made a motion to accept staff's recommendation and deny the request. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Commissioner Perry made a motion to go into closed session. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Enforcement

Rhodes Real Estate Partnership/Old Jackson "Lickety Split" Water Slide Referral – Mr. Kevin Mohammadi, Compliance and Enforcement, reported on the Rhodes Real Estate Partnership/Old Jackson "Lickety Split" Water Slide referral. Staff recommended referral of the matter to the Attorney General's Office for appropriate legal action.

The Commission received a letter from Mr. John P. Heisserer, Mr. Rhodes' attorney, stating Mr. Rhodes authorized him to make a reasonable offer to the department but it was rejected. Mr. Mohammadi stated it was not a reasonable offer.

Chairman Herrmann entertained a motion relative to staff's recommendation.

Commissioner Easley made a motion to refer Rhodes Real Estate Partnership/Old Jackson "Lickety Split" Water Slide Referral to the Attorney General's Office. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Elm Hill Park Referral – Mr. Mohammadi reported on the Elm Hill Park referral. Staff recommended referral of the matter to the Attorney General's Office for appropriate legal action.

Chairman Herrmann entertained a motion relative to staff's recommendation.

Commissioner Hauser made a motion to refer Elm Hill Park to the Attorney General's Office. Commissioner Perry seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Oak Hill Campground Referral – Mr. Mohammadi reported on the Oak Hill Campground referral. Staff recommended referral of the matter to the Attorney General's Office for appropriate legal action.

Commissioner Perry made a motion to refer Oak Hill Campground to the Attorney General's Office. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Upland Wings, Inc. Referral – Mr. Mohammadi reported on the Upland Wings, Inc. referral. Staff recommended referral of the matter to the Attorney General's Office for appropriate legal action.

Mr. James Kennedy, Upland Wings, Inc., spoke stating Upland Wings was not aware of the permit when they purchased the property. There is no mining activity. They are primarily a wildlife and reclamation entity. If the department would view them as such they could financially afford to meet the permit fees. Upland Wings is not in a position to pay the permit fees at the cost they are right now.

Commissioner Perry made a motion to refer Upland Wings, Inc. to the Attorney General's Office. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

J.M. Burger Sand and Gravel Mine – Mr. Mohammadi reported on the J.M. Burger Sand and Gravel Mine referral. Staff recommended referral of the matter to the Attorney General's Office for appropriate legal action.

Chairman Herrmann entertained a motion relative to staff's recommendation.

Commissioner Hauser made a motion to refer J.M. Burger Sand and Gravel Mine to the Attorney General's Office. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Legal

Pioneer Steakhouse and Saloon Appeal – Mr. Bill Bryan, Attorney General’s Office, reported that at the January 2005 Commission meeting there were some questions about whether the Commission should enter the recommended decision from the Hearing Officer. At the January 2005 meeting, Ms. Shelley Woods, Attorney General’s Office, presented objections on behalf of the Department of Natural Resources on the way the Hearing Officer interpreted “waters of the state” and some other issues in the case. Mr. Young, on behalf of Pioneer Steakhouse, also presented his views at the January meeting.

Mr. Bryan presented a revised recommended decision based on his review of the transcript from the hearing before the Commission and the Hearing Officer’s recommended decision. He stated the Commission could either deliberate or vote to approve, reject or modify the revised decision. The revised decision does not adopt all of the department’s recommendations. The portions of the recommended decision, to which the department objected, that Mr. Bryan felt were either inconsistent with decisions about what the meaning of waters of the state is, that didn’t have to be decided in the context of the case, or that may present problems in future cases, were deleted. The result recommended by the Hearing Officer did not change in the revised decision.

Chairman Herrmann entertained a motion to accept the Pioneer Steakhouse and Saloon Appeal final recommended decision.

Commissioner Hauser made a motion to approve the final recommended decision. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Staff Updates

Water Quality Review Sheet Process - Mr. Peter Goode, Permits and Engineering, reported on the Water Quality Review Sheet Process. He reported on what review sheets are and what staff is doing with them. The Water Quality Review Sheet determines effluent limitations. It can be a basic qualitative evaluation up to a full computer modeling scenario using actual stream data. It can be a general analysis or it can be everything down to the actual parameters of a receiving stream and the proposed discharge to it. A review sheet considers some primary things: stream flow, stream gradient, the design flow of the proposed facility, and stream conditions. The Water Quality Review Sheets, when doing the calculations and modeling, are prepared for a worse case scenario. There are other less intense Water Quality Review Sheet processes that don’t involve the complex modeling or calculations.

Staff did not always do Water Quality Review Sheets. In the past they have used technology based standards. To be protective of streams and to be consistent with EPA

guidance, staff are using water quality based effluent limitations. Due to limited resources, a backlog has been created in the permitting process.

Some of the things staff are doing to improve the permitting process include developing a tiered system so they are not doing full modeling on every single review sheet request that comes in. They will be training additional staff in the central office and the regional offices to assist with the process. There are some consultants qualified to do this work and are paid by their clients. Staff then reviews the work that the consultant has done. There will be some training in the spring for consultants to learn the process. Staff is establishing a calculation-based procedure to calculate effluent limits. There is the option to do full modeling for Water Quality Review Sheets and using as much actual data that can be obtained. For renewal of small flows we will use an abbreviated review sheet. For new facilities they are looking at standard technology based limits for some small flows to get some permits done faster. There is still a lot of work left to do to improve the process.

Combined Sewer Overflow (CSO) Update – Mr. Phil Schroeder, Water Quality Monitoring and Assessment, gave an update on the review of the rules regarding CSOs. At the January 2005 Commission meeting it was mentioned that a group was formed to begin looking at the rules that address CSOs. There has been one meeting held to address the high flow exemptions and wet weather issues. The workgroup was concerned that what they would develop in the Water Quality Standards Rule may effect where they would go on the CSO rule. The comments and suggestions made during that meeting ended up in the draft rule.

The workgroup will be meeting again in a few weeks. They are aware of the Commission's directive in terms of deadlines. The deadlines are to form a workgroup by the first of the year, which has been done. The second one is to present to the Commission a fully drafted proposal for changes to the CSO rule. They see no reason not to be able to meet those deadlines.

Permitting Update – Mr. Peter Goode reported the Environmental Protection Agency (EPA) has volunteered some of their staff time to assist in writing permits for all of Region 7's states. Staff has sent EPA two major industrial source permits and also three major municipal permits. They are also consistently sending them minor permits to work on. EPA has produced a number of permits for the department.

With the exception of one of their general permit templates, all of the department's general permit templates are up to date, meaning there are no expired ones, which will help further reduce the permit backlog. Previously staff had been issuing public notices and final permits every two weeks. They are now doing those on a weekly basis.

Standing Items

Mr. Scott Totten, Water Protection and Soil Conservation Division, reported the Department of Natural Resources has a new director, Mr. Doyle Childers.

Budget and Legislation – Mr. Totten stated there has been CAFO bills filed in the Senate and the House. The department testified in favor of both of those bills. There is a bill related to the Commission's roles and responsibilities in terms of hearing appeals.

The department is working on a range of scenarios of 5%, 10%, 15%, 20% and 25% reduction in general revenue funds. Funds for petroleum storage tank inspections by the department were cut by the Governor in his recommended budget. There is proposed legislation for solid waste and hazardous waste fees that, if not passed, will have a negative fiscal impact on the department. The combined effect of these actions could impact 50-60 FTEs in the department; 25-27 of the affected FTEs could be from the Water Protection and Soil Conservation Division. We try to match up each FTE reduction with a vacant position and the division currently has 16 vacancies. There are not enough vacancies for all of the affected positions so there could be some layoffs in July.

Director's Update – Mr. Ed Galbraith reported the draft Administrative Hearing Commission Rule, that the Core Commissioners Workgroup prepared, has been sent to the Attorney General's Office for review to make sure there are no conflicts before bringing the rule to the Commission for their consideration.

A legislative report is prepared weekly to keep the Commissioners informed and current on things that will effect them. Those reports will go out on Fridays.

Mr. Galbraith sees the program's greatest areas of need are the Water Quality Review Sheets and Use Attainability Analysis' (UAA). He will keep the Commission informed of the program's efforts to succeed in those areas.

The Whole Body Contact (WBC) issue, UAAs, and the 911 facilities that may be impacted by the WBC issue are all related to water quality. Staff is looking at some models that Kansas has done for reducing the 911 facilities. They are looking at resources in the department and volunteer resources. They are putting together a plan for how they are going to reduce the 911 facilities.

Future Meetings – The May 4, 2005 Clean Water Commission meeting is scheduled at the Governor's Office Building, Jefferson City, Missouri. There was a recommendation to hold the July 6, 2005 Clean Water Commission meeting in Moberly, Missouri.

Commissioner Hauser made a motion to hold the July 6, 2005 meeting in Moberly, Missouri. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Missouri Clean Water Commission
March 2, 2005

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Respectfully Submitted,

Edward Galbraith
Director of Staff